

REPORT

Of the Committee of Claims on the bill from the Senate, for the relief of Josiah Hook, jun.

JANUARY 24, 1824.

Read, and, with the bill, committed to a committee of the whole House on Monday next.

The Committee of Claims, to whom was referred the bill from the Senate, entitled "An act for the relief of Josiah Hook, jun."

REPORT:

A report was made in this case the 5th of February, 1823. The Committee beg leave to adopt that report, and the documents accompanying it, as a part of their present report, and respectfully invite the attention of the House to the same.

At this time, the committee see no reason to change the opinion heretofore expressed, and therefore submit the following resolution:

Resolved, That the bill from the Senate, entitled "An act for the relief of Josiah Hook, jun." be indefinitely postponed.

[Report made at the Second Session of the Seventeenth Congress, on the petition of Josiah Hook.]

The Committee of Claims, to whom was referred the petition of Josiah Hook,

REPORT:

That the petitioner states, he was collector for the district of Penobscot, in the state of Maine: that, in the month of September, 1814, in the execution of his office of collector, he seized a drove of cattle, which were attempted to be transported to the enemy, while in possession of Castine: that, although the judge of the United States Court certified there was probable and reasonable cause for making said seizure, yet a suit was afterwards commenced against him in the state court of Massachusetts, by Josiah Hoit, the owner of said cat-

tle, who obtained judgment against the petitioner for \$897 82, damages, and costs \$60 73: that he sued out a writ of review; that proceedings were thereupon had before the Supreme Judicial Court, in said state, where said judgment was confirmed, and further cost of \$6 46: that he has expended \$200 in defending said suits; all of which judgments and costs he has paid, amounting to——— which he asks to be refunded to him by the United States, with interest. For a further history of this case, the committee refer the House to the accompanying correspondence between the Comptroller of the Treasury, the petitioner, and the District Attorney for the United States, No. 1, 2, 3, 4, 5, 6, 7, 8, 9, and to two letters from the Secretary of the Treasury, directed to the Committee of Claims, Nos. 10 and 11. This correspondence is satisfactory to the committee, that the petitioner has not prosecuted his defence with that due diligence and good faith which would entitle him to indemnity from the Government.

The committee therefore recommend that the claim of Josiah Hook be rejected.

No. 1.

COLLECTOR'S OFFICE,

Castine, October 6th, 1818.

SIR: In the month of September, 1814, and not long after the British forces had taken possession of Castine, and the country east of the Penobscot, I seized twenty-one fat oxen, one heifer, and one steer, as forfeited to the United States, for two several causes, namely:

1st. Under the laws of war and nations, that these cattle were destined for the supply of the enemy, and were actually on their way to the enemy.

2d. Under the statute of the United States, prohibiting the transportation of cattle to the British provinces.

This seizure having been made on land, the question of fact, as to the destination of the cattle, was submitted to a jury. The first jury could not agree in a verdict. A second jury, (the war having in the mean time closed) found a verdict for the claimant.

As the keeping of the cattle was very expensive, and as the cause could not be decided under some months, owing to the disagreement of the jury, the judge ordered the cattle sold, and the proceeds paid into court. The cattle were, accordingly, sold, and, after the decree of restoration, the proceeds, deducting certain expenses allowed by court, were paid over to the claimant, agreeably to the terms of the decree; the Judge, at the same time, certifying the record, that there was probable cause of seizure.

Notwithstanding the certificate of the Judge, I was afterwards prosecuted in the State Courts for this seizure. For the history of

the progress and termination of this suit, I refer you to the enclosed copy, marked A, of the judgment recovered against me. What I did, was done in the strict line of my official duty, and now submit to you my claim on the United States for indemnity.

The moneys I have paid, and the expenses I have been subjected to, in consequence of this prosecution and judgment against me, are stated in the enclosed account, marked B. I will add, that if the Government should be dissatisfied with the judgment of the State Court in this case, the record, I am instructed, is so made up, as that a writ of error may be brought into the Supreme Court of the United States.

I have the honor to be, Sir, very respectfully,

Your obedient servant,

JOSIAH HOOK, *Collector.*

To the Hon. WM. H. CRAWFORD.

No. 2.

TREASURY DEPARTMENT,

Comptroller's Office, 4th November, 1818.

SIR: The Secretary of the Treasury has referred to me your letter, of the 6th ultimo, enclosing a transcript of the proceedings against you in the State Courts, on an action of trespass in the case of a seizure made by you of some oxen, &c. which you considered as having been forfeited to the United States, under the act (I presume) of 6th July, 1812.

It appears that a libel was regularly filed by you, in the District Court of the United States, and that judgment was given in favor of the claimant; but, with a certificate of the Judge of that court, that there was probable and reasonable cause of seizure; notwithstanding which, in a suit instituted against you by the claimant, the State Court gave a verdict in his favor, for damages to the amount of \$897 82 cents.

Under these circumstances, the propriety of an appeal to the Supreme Court of the United States, is to be decided by this Department.

The principles laid down by the Supreme Court of the United States, in February term last, in the case of *Gelston vs. Hoyt*, leave no room for doubt, as to the propriety of an appeal in the case under consideration.

According to those principles, if an action of trespass be brought in a State Court of common law, after an acquittal in a District Court of the United States, of the thing seized, and there be a certificate of reasonable cause of seizure, by the special enactment of the statute of 25th April, 1810, ch. 64, s. 1. (should have been 24th February, 1807, ch. 74, s. 1,*) the certificate is a good bar to the action.

* Vol. 4. page 91.

You will, therefore, be pleased to request the District Attorney to take the requisite steps for an appeal in your case.

With great respect,

JOS. ANDERSON, *Comptroller.*

JOSIAH HOOK, Esq.

Collector, Castine.

No. 3.

TREASURY DEPARTMENT,

Comptroller's Office, 23d February, 1819.

SIR: On the 4th November last, you were instructed to request the District Attorney to take the requisite steps for an appeal from the decision of the State Court against you, on an action of trespass, for the seizure of some oxen, &c. Will you have the goodness to inform me what has been done in that business?

Respectfully,

JOS. ANDERSON, *Comptroller.*

JOSIAH HOOK, Esq.

Collector, Castine.

No. 4.

COLLECTOR'S OFFICE,

Castine, March 6th, 1819.

SIR: I immediately, on the receipt of your letter of the 4th of November, furnished the District Attorney with a copy; and have, likewise, sent him a copy of yours of the 23d ult. requesting him to give you a statement of what has been done, as it respects an appeal from a decision of the State Court against me, as soon as possible.

I am, Sir, very respectfully,

Your obedient servant,

JOSIAH HOOK, *Collector.*

To the Hon. JOSEPH ANDERSON.

No. 5.

PORTLAND, *March 10, 1819.*

SIR: Sometime in December last, Josiah Hook, Esq. Collector of Penobscot, communicated to me your letter of the 4th November, respecting an appeal to the Supreme Court of the United States, in

the case of Hoit vs. him. Immediately afterwards, I applied to the Attorney General for a blank writ of error, and, accordingly, received one about the 5th of January last. But the distance to Boston, the residence of the Chief Justice of Massachusetts, to this place, being about 120 miles, and the distance from this place to Castine, the residence of the clerk, who has the custody of the record in question, being about 130 miles; and Hoit, the original plaintiff, having, since the recovery of that judgment, removed with his family to New Hampshire, we knew not precisely where, it became impossible to have the writ and citation served in season for the present term of the Supreme Court. They will be served and returned in due season for the next term. I will add, Hoit has lately been brought into this town, where he is now in jail, under conviction of smuggling.

I am, &c.

WM. P. PREBLE.

Hon. Jos. ANDERSON,
Comptroller, Washington City.

No. 6.

TREASURY DEPARTMENT,
Comptroller's Office, 21st April, 1819.

SIR: I have the honor to acknowledge the receipt of your letter of the 10th ultimo, stating the measures which had been adopted, pursuant to the instructions which had been given by this Department, for an appeal from the decision of a state court, against Mr. Hook, collector of the district of Penobscot, at the suit of Josiah Hoit, for damages in the seizure of some cattle, which, there were strong grounds for suspecting, the latter intended to drive to the enemy, contrary to his duty to his country, and an express prohibition by law.

On trial in the court of the United States, the cattle were adjudged not to have been forfeited to the United States; but a certificate was granted by the court, "*That there was reasonable cause of seizure,*" notwithstanding which, the state court entertained the suit of Hoit against the collector who made the seizure, and found damages to the amount of \$897 82, contrary to the express provisions of the act of 24th February, 1807, which says, that, in case a certificate of *reasonable cause of seizure* shall be granted by court, "the claimant or claimants shall not be entitled to costs, nor shall the person who made the seizure, or the prosecutor, be liable to action, suit, or judgment, on account of such seizure and prosecution."

That the certificate granted in the case under consideration ought to have been considered by the state court a good plea to bar the action brought against Mr. Hook, there can be no doubt, as will be seen from the principles laid down by the Supreme Court of the Unit-

ed States, in the case of *Gelston vs. Hoyt*, *Wheaton's Reports*, vol. 3, pa. 246.

But, from the circumstances stated by you, that Hoit had lately been imprisoned in Portland, under conviction of smuggling, it becomes a question of expediency, whether to proceed further with the appeal in his case.

It is probable, that, in case of obtaining a judgment against him, there might not be property sufficient to pay even the costs of suit. If so, it would be subjecting the United States to a useless expense, in trying a point which has already been completely settled by the highest judicial tribunal in the country.

You will, therefore, be pleased to make inquiry respecting his circumstances and pecuniary affairs, and communicate the result, when definitive instructions shall be given to you, as to the course to be pursued in the case.

With great respect,

JOS. ANDERSON, *Comptroller*.

WM. P. PREBLE, Esq.

District Attorney, Portland.

NOTE.—It does not appear that any subsequent communication, on this case, was received from the District Attorney, or that any further instructions thereon were given to him by the Treasury.

No. 7.—B.

Abstract of payments made to inspectors, gaugers, weighers, measurers, &c. &c. for store rent, and other contingencies, in the district of Penobscot, commencing April 1st, and ending June 30, 1819.

	No. of Voucher.	Dolls. Cts.
1819, June 30, To Josiah Hook, inspector of the revenue, as per account and re- ceipt,	1	4 40
Benj. Hook, do. do. do.	2	236 45
Thos. B. White, do. do. do.	3	107 23
True & Weston, do. do. do.	4	9 00
James Getchell, do.	5	3 75
Samuel Black, do.	6	13 00
Dan. Johnson, for store rent, do.	7	7 50
Paid certified bills of cost on Cas- tine duty bonds, as per abstract,	8	1,264 02
Paid amount of execution, &c. in the case of Josiah Hoit vs. Jo- siah Hook, collector, as per ab- stract,	9	*1,138 50
		<u>2,783 85</u>

COLLECTOR'S OFFICE, *District of Penobscot, June 30, 1819.*

JOSIAH HOOK, *Collector.*

Amount brought down,	\$2,783 85
* Deduct this sum disallowed,	1,138 50
	<u>\$1,645 35</u>

NOTE.—The Documents produced for the charge of \$1,138 50, are filed with others of a similar nature.

J. W.

No. 8.

Extract of a Letter from the Comptroller of the Treasury to Josiah Hook, Esq. Collector of Penobscot, dated 16th September, 1820.

“On referring to the settlement, I find that the sum of \$1138 50 was disallowed, being the amount of the execution and other expenses in the case of Hoit versus yourself; because, in such case, Congress only can afford relief, to whom an application should be made by you.”

No. 9.

Portland, December 10, 1821.

DEAR SIR: In compliance with your request, and to enable your friends more readily to understand the nature of your case, I have prepared the following brief statement of the facts.

In 1814, you seized in Prospect a drove of cattle, which the owners were endeavoring to transport to the British forces, then in possession of Castine. They were libelled in the District Court of the United States, and although the evidence was such as to leave scarcely a doubt on the mind, yet, being altogether of a circumstantial nature, *the jury could not agree in a verdict* at the first term, and the cause was ordered to stand continued. As it was however late in the season, and it would be very expensive keeping the cattle, I offered the claimant to consent to his taking the cattle, on his giving bond for their appraised value, to abide the event of the prosecution. This offer the claimant declined accepting. The Judge then, by an interlocutory decree, ordered the cattle to be sold, and the proceeds to be deposited in court for the benefit of whomever it might concern. A writ of venditioni exponas accordingly issued to the Marshal, who returned the same, duly executed. At the next term of the District Court, the cause again came on for trial; but peace having in the mean time taken place, and people being much disposed to forgive and forget, *the jury returned a verdict for the claimant*. Thereupon, the Court ordered the nett proceeds of the sales of the cattle, deducting therefrom the expense of the hay, provender and keeping that had been provided for them subsequent to the seizure, to be paid over to the claimant; and the same was paid over accordingly, and receipted for by his attorney. The Court also certified that there was *reasonable cause of seizure*. The claimant, Josiah Hoit, then commenced an action in the courts of Massachusetts against you, for the seizure of the cattle, and the same came before the Supreme Judicial Court of that state, for trial: and although all the material facts, as above stated, were disclosed by you in your defence, and proved on the trial, the Court held, that, notwithstanding the District Judge had certified that there was reasonable cause of seizure, the facts disclosed and proved did not constitute a sufficient defence; and by their direction *the jury returned a verdict against you for the full value of the cattle at the time of seizure*. And these proceedings, at Nisi Prius, were confirmed by the whole Court. (See Hoit vs. Hook, 14 Mass. Rep. 210.)

As the facts disclosed by you in your defence did not appear of record, and so no writ of error would lay to the Supreme Court of the United States, and as the Treasury Department had directed you to take measures to bring the cause before that court, you sued out, agreeably to the laws of Massachusetts, a writ of review; and the cause again came before the Supreme Judicial Court of Massachusetts, for trial. At this trial, the jury returned a *special verdict*, finding all the facts disclosed in your defence; but the Court gave judgment against you.

The facts, on which you relied as constituting your defence, having thus become a matter of record, I sued out a writ of error, returnable to the Supreme Court of the United States. But, in the mean time, Hoit had become insolvent, and miserably poor. He was even then lying in gaol, on an execution recovered against him for smuggling, by the United States. Under these circumstances, the Treasury Department thought the further prosecution of the writ of error was not advisable, and accordingly the suit was dropped.

I am, dear Sir, with due respect,

Your obedient servant,

WM. P. PREBLE.

JOSIAH HOOK, Esq.

Collector of the Customs, Castine.

No. 10.

TREASURY DEPARTMENT,

8th February, 1822.

SIR: I have the honor to return the petition of Josiah Hook, with the papers which were transmitted with it. Enclosed is a copy of the correspondence between the Comptroller of the Treasury, the District Attorney of the United States, and the petitioner, relative to the subject-matter of the petition.

From this correspondence, it does not appear, that the petitioner was directed by the Comptroller to abandon the writ of error which it had been intended to prosecute.

It is presumed, that the judgment had been satisfied, before the case had been placed in a situation to be brought into the Supreme Court, but this does not appear distinctly. The amount of the judgment and costs appear in the accounts of the Collector, for the second quarter of 1819. The first notice of this suit received by the Department, it appears, was in the month of October, 1818. On the 4th of November, of the same year, a writ of error was directed.

It is certainly the duty of all officers of the Government, in all cases where they suppose themselves entitled to indemnity, to give due notice, and to do all things necessary to a complete defence. Had a writ of error been sued out before the money had been collected upon execution, the insolvency of the plaintiff would have furnished no inducement to abstain from its prosecution. From the facts as they appear, it is presumed that the petitioner had satisfied the execution before he gave any notice of it to the Department, though this does not distinctly appear.

There can be no doubt of the illegality of the judgment, nor of its injustice, as it relates to the petitioner. The only ground of doubt is, whether the petitioner by his failure to give timely notice

to the Government, and to pursue his legal defence before a tribunal, in which justice would have been awarded to him, has not so far impaired his right to indemnity, as to release the Government from all obligation to refund what has been unjustly taken from him under color of law.

I remain, with respect,

Your most obedient servant,

WM. H. CRAWFORD.

Honorable LEWIS WILLIAMS,

Chairman of the Committee of Claims.

No. 11.

TREASURY DEPARTMENT,

30th January, 1823.

SIR: In reply to your letter of the 29th instant, I have the honor to state, that, it was the duty of the Collector to have given notice to the Department, in due time, of the suit against him, if he intended to look to the Government for indemnity. Upon this point I refer you to my letter, of the 8th of February, 1822, to the Chairman of the Committee of Claims.

It is understood, that an appeal operates as a supersedeas of the judgment in the Court from whence the appeal is taken. If the appeal in the case of the petitioner had been entered in due time, the judgment would not have been satisfied until the appeal had been decided upon by the Supreme Court.

It may be proper, however, to state, that I have not had time to look into the authorities in the case, but, upon general principles, it is believed, there can be no reason to doubt, that an appeal does suspend all proceedings in the Court from whence it is taken, during the time the appeal is pending.

I remain, with respect,

Your most obedient servant,

WM. H. CRAWFORD.

Honorable WM. M'Coy.

IN SENATE OF THE UNITED STATES,

January 2, 1824.

Mr. HOLMES, of Maine, from the Committee on the Judiciary, to whom was referred the petition of Josiah Hook, jun. Collector of the District of Castine, praying relief from a judgment recovered against him in the Supreme Judicial Court of Massachusetts, by Josiah Hoit,

REPORTED:

That the petitioner, being Collector of Penobscot, did, on the 20th September, 1814, in the due execution of his office, seize twenty-one oxen, one heifer, and one steer, as forfeited to the United States for an attempt to transport them to the territory of the enemies of the United States, to supply them with provisions; that these cattle were duly libelled in the District Court of the United States for the district of Maine; and that, by an interlocutory decree of said court, the cattle were sold at auction, and the proceeds deposited in the Cumberland Bank, and afterwards, by a final decree of said court, the same proceeds, (after deducting the expenses, amounting to \$153 37,) were paid over to Josiah Hoit. Hoit afterwards commenced an action of trespass against the petitioner, in the Court of Common Pleas for the county of Hancock; and, on an appeal to the Supreme Judicial Court, Hoit recovered judgment against the petitioner for \$897 82, damage, and \$60 73 costs. The petitioner sued out a writ of review on the judgment; and, at the June term of said Supreme Judicial Court, in 1818, on a special verdict, the judgment was affirmed, with \$6 46 costs; all which the petitioner has paid.

It further appeared, that judgment was rendered in the District Court, on a verdict of the jury, in favor of Hoit, the claimant; but the judge certified that there was reasonable cause of seizure.

It appeared that, at that time, on that frontier, it was extremely difficult to detect and convict those who violated the law by feeding the enemy; and that Hoit was, at the time of the payment of the judgment to him, insolvent, and in jail for smuggling; and that a remedy, by writ of error, to the Supreme Court of the United States, would have been of no benefit, but a great additional expense to the petitioner.

Your committee are, therefore, of the opinion, that the prayer of the petitioner ought to be granted, and they report a bill accordingly.

IN SENATE OF THE UNITED STATES,

January 10, 1822.

MR. SMITH, from the Committee on the Judiciary, to which was referred the petition of Josiah Hook, made the following

REPORT:

The petitioner states that he was collector of the port of Penobscot, and, on the 20th September, 1814, in the due execution of his office, he seized twenty-one oxen, one heifer, and one steer, as forfeited to the United States, for an attempt to transport them from the town of Prospect, in said state, to Castine, to supply the enemies of the United States with provisions; which cattle were afterwards duly libelled in the District Court of the United States, for the district of Maine, and an interlocutory decree that the cattle should be sold at public auction, and the proceeds deposited in the Cumberland bank, for the benefit of whomsoever it might concern. Afterwards, a final decree passed, that the proceeds should be paid to Josiah Hoit, the claimant. But the Judge of the District Court certified there was reasonable cause for seizure.

The petitioner further states, that, afterwards, the said Josiah Hoit commenced an action of trespass against him in the court of Common Pleas of Hancock county; and, on the 3d Tuesday of June, 1817, the said Josiah Hoit recovered judgment against him, for the sum of eight hundred and ninety-seven dollars and eighty-two cents, and sixty dollars and seventy-three cents for his costs of suit. Upon which, the petitioner sued out a writ of review against the said Josiah Hoit, and proceedings were had thereon; that, at the Supreme Court, held at Castine, on the — Tuesday of June, 1818, upon a special verdict rendered, the former judgment was affirmed, with costs taxed at six dollars and forty-six cents, which judgment he was compelled to pay. He also states, that he had expended two hundred dollars in defending himself in those suits; and prays to have the said several sums repaid him.

Your committee are of opinion that the prayer of the petitioner ought to be granted, and beg leave to report a bill accordingly.

To the honorable the Senate and House of Representatives of the United States in Congress assembled, at Washington, November, Anno Domini 1820.

Josiah Hook, Jr. of Castine, in the state of Maine, Collector of the port of Penobscot,

RESPECTFULLY REPRESENTS:

That, on the 20th day of September, in the year of our Lord one thousand eight hundred and fourteen, in the due execution of the duties

of his said office, he seized twenty-one oxen, one heifer, and one steer, as forfeited to the United States, for an attempt to transport them from the town of Prospect, in said state, to Castine, to supply the enemies of the United States with provisions; which said cattle were afterwards duly libelled in the District Court of the United States for the district of Maine, where an interlocutory decree passed, that the cattle should be sold at public auction, and the proceeds deposited in the Cumberland Bank for the benefit of whomsoever it might concern; and, afterwards, a final decree passed, that the proceeds should be paid to Josiah Hoit, the claimant; and it was certified by the Judge of the said District Court, that there was *probable and reasonable cause* for the seizure aforesaid.

And the said Josiah Hook, Jr. further represents, that, afterwards, at the Circuit Court of Common Pleas for the county of Hancock, held on the first Tuesday of November, in the year of our Lord eighteen hundred and fifteen, the said Josiah Hoit impleaded him in an action of trespass, for taking the said cattle as aforesaid: and such proceedings were therein had that, at the Supreme Judicial Court, held at Castine, in the county of Hancock, and for the counties of Hancock, Washington, and Penobscot, on the third Tuesday of June, A. D. 1817, the said Hoit recovered judgment against him for the sum of eight hundred and ninety-seven dollars and eighty-two cents, damages, and sixty dollars and seventy-three cents for costs of suit.

And the said Josiah Hook, Jr. further shews, that, afterwards, he sued out a writ of review against the said Hoit, and such proceedings were thereupon had that, at the Supreme Judicial Court, held at Castine, on the third Tuesday of June, A. D. 1818, upon a special verdict rendered, the former judgment was affirmed, with costs taxed at six dollars and forty-six cents; which judgment the said Hook has been compelled to pay.

And the said Hook further states, that he has been put to great trouble in defending himself against the said suit, and has expended large sums of money, to wit: the sum of two hundred dollars, in addition to the judgment aforesaid. He, therefore, prays that an act may be passed for his relief, and that he may be indemnified for his losses, and for the money he has paid, with interest thereon; and, as in duty bound, will ever pray.

JOSIAH HOOK, JR.

COLLECTOR'S OFFICE,

Castine, December 20th, 1820.

SIR : Will you have the goodness to present the enclosed petition, which is to relieve me from a judgment obtained by Josiah Hoit, in

the state court, as per copy enclosed. This would have gone up to the Supreme Court of the United States, by an appeal, but Hoit had spent the money, and was in jail for smuggling, and it would have been of no avail to have recovered of him, as he was worth nothing. It would be nonsense for me to make any comment on the decision of the state court, to you who are so much better able to judge of it than myself. It was not sufficient to indict my inspectors for highway robbery, imprison, and bind them over to court for doing their duty, and put me to great expense to defend them, (which were all honorably discharged,) but they must try me in the state court.

I believe it is not necessary to send you the items and vouchers. The amount paid, separate from my own expenses, is \$1,146. If necessary, you will find in the office of the Comptroller of the Treasury, the vouchers and amount paid, except the additional expense of the papers now forwarded.

Your particular attention to the petition will very much oblige one of your constituents.

I am, sir, with much esteem,

Very respectfully, your obedient servant,

JOSIAH HOOK, jun.

Hon. JOHN HOLMES.

HOUSE OF REPRESENTATIVES,

December 31, 1822.

DEAR SIR: Josiah Hook petitions Congress, and states that, under statute of July 6, 1812, he seized twenty-one oxen and two other cattle as designed for the enemy; that they were libelled in the district court, and in 1815, after the peace, verdict was against the United States, in favor of one Hoit, the claimant.

November term, 1815, Josiah Hoit sued said Hook for the same cattle.

June term, 1817, he recovered judgment for the value of the creatures, &c. which judgment,

June term, 1818, was finally affirmed, with costs, in amount \$1,138 50 cents, which judgment was immediately paid.

October 6, 1818, Mr. Hook informed Mr. Crawford of what had been done, and what he had suffered, and sent him a certified copy of the judgment and costs.

November 4, 1818, the Comptroller directs Mr. Hook to request the District Attorney to prosecute an appeal.

February 23, 1819, same Comptroller requests Mr. H. to state what he had done.

March 6, 1819, Hook says he "immediately, on the receipt of his letter, directed the District Attorney to prosecute the appeal."

March 10, 1819, Mr. Preble, the District Attorney, having taken the business into his hands, states the difficulties as to copies, &c. but that said Hoit was in jail at Portland, for *smuggling*.

April 21, 1819, the Comptroller states to Mr. Attorney, as Hoit is in prison, "it is a question if the Attorney had better proceed further;" [and without consulting Hook he dropped it,] as Hook says.

December 10, 1821, Letter of Mr. P. District Attorney, details the whole case.

February 8, 1822, Mr. Crawford writes to Mr. Williams, chairman of said committee. The above is a chronological view of this case truly important to Mr. Hook.

REMARKS.—When Hook seized the cattle, he was acting at a most critical time, amid the war, and at a most critical place, the enemy in full possession of all *east* of Penobscot, and he making the seizure immediately on the *west* banks of that river. To the personal knowledge of the undersigned, Mr. Hook's promptitude and fidelity had a great check on smuggling, and were the means of placing many thousand dollars in the Treasury; I appeal to the Treasury books for the fact. Shall an old faithful servant of the Government be, in a case like the present, left to suffer \$ 1,138 50, without any fault? Far be this from any attribute of our Government!

LETTER OF MR. PREBLE, DISTRICT ATTORNEY, one would think ought to be sufficient to satisfy any unbiased mind. He was an officer of the Government, was on the spot, knew all the facts, took the business into his own hands, commenced and dropped the writ of error, on the responsibility of himself or of the Comptroller; yet, from the whole of Mr. Preble's letter, it is very apparent he was entirely satisfied with Mr. Hook's conduct in the whole business.

District Judge, certified that "*there was reasonable cause of seizure.*" He was also an officer of Government, and under his certificate shall Hook neither be protected in the courts of Massachusetts nor in the National Legislature? The Senate say he ought to be remunerated.

AS TO MR. CRAWFORD'S LETTER, he says "it does not appear that the petitioner was directed by the Comptroller to abandon the writ of error." Hook did not abandon it; the business was exclusively between the *District Attorney* and the *Comptroller*; they dropped it when they thought proper, without even consulting Hook; if there was any wrong *they* were solely the authors of it, not HE.

But, Mr. Crawford says, "the only ground of doubt is, whether the petitioner, by his failure to give timely notice to the Government, and to pursue his legal defence before a tribunal in which justice would have been awarded to him, has not so far impaired his right to indemnity as to release the Government from all obligation to refund what has been unjustly taken from him, under color of law."

Even by this part of Mr. Crawford's letter, it is clearly inferred, 1st, that Mr. Hook has suffered very *unjustly*; 2d, that he was cer-

tainly once entitled to be indemnified by the Government of the United States; 3d, that he defended himself with sufficient energy and zeal in the courts of Massachusetts: as the report of the case is in the 14th Massachusetts Rep. p. 210.

Only two questions remain, 1st, did he so prosecute in the United States' court? and, 2d, did he give timely notice?

As to the 1st, I would remark, the Comptroller labored under a mistake; he supposed the cause could be carried from the Supreme Judicial Court of Massachusetts into the Courts of the United States by *appeal*; but no, it could be carried *there* only by writ of error; it was so carried there; and afterwards was abandoned [very properly, in my opinion] without consulting Hook. Indeed, why should he be consulted? The proper officers of Government had taken the case into their own hands, and did as they deemed prudent. Here was no fault on the part of Hook.

But, 2dly, *Did Hook give the Department seasonable notice?* He certainly did. Judgment was recovered against him the last of June, 1818. He was, by the laws of Massachusetts, obliged to pay *immediately*. Execution can issue in 24 hours after judgment. Mr. Hook had personal property sufficient, which could be seized and sold, on such execution, in four days. Hoit, his antagonist, was a creature who would not delay. No appeal (if it lay) into the United States' court would operate a *supersedeas* or *stay* of execution; much less would a writ of error. Indeed, I believe, in none of the states, certainly neither in Massachusetts nor in England, will a writ of error stay an execution a moment. Nay, nothing could save Hook from advancing the money as he did. He notified the Secretary of the Treasury in about *three* months after judgment was rendered against him. What possible advantage could have accrued to Government from an earlier notice? According to Mr. Preble's letter of March 10, 1819, it seems no writ of error was sued out till about that time, viz: four months after Hook's letter of notice to the Secretary of the Treasury. Mr. Preble, the District Attorney, don't so much as *intimate* that Mr. Hook's delay to notify the Treasury Department, operated in the least to the disadvantage of Government. Besides, the notice was given at the beginning of a quarter, (Oct. 6,) the usual time for making out the Collector's quarterly returns. After the writ of error was dropped, the Collector, at the close of the ensuing quarter, [viz: June 30, 1819,] inserted the disbursements, and deducted them from his quarterly account, &c. Another reason, perhaps, why earlier notice was not given, by Mr. Hook, to the Treasury Department, was, that Mr. Preble himself did assist Hook, as attorney, when final judgment was rendered against him (Hook) in Massachusetts' court, June, 1818. He might well expect Mr. Preble would proceed as law and expedience would sustain, without any further application to the Treasury Department.

On the whole, it would seem to be trifling with a man's rights and his well earned property, to say he has been wronged and ought to be remunerated, but for a *delay* to notify Government, when it is seen

that such *delay* has in *no wise* been prejudicial to Government. I trust this honorable committee, and the Legislature will deal out better justice than this to Mr. Hook; and will say that he shall, after a lapse of more than four years, be paid what he has had to pay on account of the execution and discharge of duty to the Government.

Most respectfully, I am, &c.

WM. D. WILLIAMSON.

To the Hon. Mr. WILLIAMS,

Chairman of the Committee of Claims.

COMMONWEALTH OF MASSACHUSETTS.

Hancock, &c. ss. At the Supreme Judicial Court, begun and holden at Castine, within the county of Hancock, and for the counties of Hancock, Washington, and Penobscot, on the third Tuesday of June, (being the sixteenth day of said month,) in the year of our Lord eighteen hundred and eighteen :

Josiah Hook, junior, of Castine, in said county of Hancock, Esquire, plaintiff, in review, vs. Josiah Hoit, of Belfast, in said county of Hancock, gentleman, defendant, in a plea of review of a plea of trespass, commenced and prosecuted in our circuit court of common pleas for the third eastern circuit, held at Castine, within and for our said county of Hancock, on the first Tuesday of November, in the year of our Lord eighteen hundred and fifteen, by the said Josiah Hoit against the said Josiah Hook, jun. in the words following, viz : " In a plea of trespass, for that the said Josiah Hook, jun. at Prospect, in said county, on the twentieth day of September, in the year of our Lord eighteen hundred and fourteen, with force and arms took, seized, and carried away, from the possession of the plaintiff, twenty one large fat oxen, of the value of fifty dollars each; one heifer, of the value of thirty dollars; one steer, of the value of thirty dollars; the proper goods and chattels of the plaintiff; and other enormities then and there did, against the peace, and to the damage of the said Josiah Hoit, (as he saith,) the sum of fifteen hundred dollars." At which said circuit court of common pleas, at April term, in the year of our Lord eighteen hundred and sixteen, judgment was rendered that the said Hook recover against the said Hoit costs of suit. From which judgment the said Josiah Hoit appealed to our supreme judicial court, held at Castine, within our county of Hancock, and for our counties of Hancock, Washington, and Penobscot, on the third Tuesday of June, in the same year; and from thence said appeal was continued to the then next term of the said supreme judicial court, held at said Castine, for said counties, on the third Tuesday of June, last past, when and where judgment was rendered, that the said Josiah Hoit recover against the said Josiah Hook, jun. the sum of eight hundred and ninety-seven dollars and eighty-two cents, damage, and costs of suit; which said judgment the said Josiah Hook, jun. says, is wrong and erroneous, and that he is

thereby damned the sum of twelve hundred dollars, as shall then and there be made to appear. Wherefore, for reversing the last mentioned judgment, and recovering back from the said Josiah Hoit the said sum of eight hundred and ninety seven dollars and eighty two cents, the damage aforesaid, and the said costs, and for recovering judgment against the said Josiah Hoit, for costs of courts, he, the said Josiah Hook, jun. brings this suit. This action was commenced at this term, and now the parties appear, and the cause, after a full hearing, is committed to a jury, sworn according to law to try the same, who return their verdict therein upon oath; that is to say: "They find that the said Josiah Hook, junior, on the twenty second day of September, in the year of our Lord eighteen hundred and fourteen, did take, seize, and carry away the oxen, heifer, and steer, mentioned in the original declaration of said Hoit against said Hook; and the jury further find, that, at the time of the taking, seizing, and carrying away, aforesaid, the said Hook was collector of the customs of the United States for the district of Penobscot, duly appointed, and commissioned, and sworn; and he, the said Hook, as collector aforesaid, seized the said oxen, heifer, and steer, as forfeited to the United States of America, for an alleged violation of the laws of the United States, which is the same taking, seizing, and carrying away, mentioned in the said Hoit's original declaration; and afterwards, on the twenty first day of November, in the year of our Lord one thousand eight hundred and fourteen, the said oxen, steer, and heifer, were duly libelled in the District Court of the United States for the Maine District, by the Attorney of the United States for said Maine District, as forfeited to said States; for that, on the twenty second day of September, in the year of our Lord eighteen hundred and fourteen, at Prospect, in said Maine District, certain citizens of said States, unknown to said Attorney, did attempt to transport the oxen, heifer, and steer, aforesaid, from the town aforesaid, to a certain place in the actual possession and occupation, and under the government of the enemies of the United States, viz. to a place called Castine, the said oxen, heifer, and steer, being an article of provision, and then and there intended for the supply and support of the enemies of the United States. And also, for that, on the said twenty second day of September, certain citizen or citizens of said States, unknown to said Attorney, at said Prospect, did, then and there attempt to transport the said oxen, heifer, and steer, the same being an article of provision, from Prospect aforesaid, to some place within New Brunswick, unknown to said Attorney, contrary to the form of the statute in that behalf made and provided, whereby, and by force of said statute, the said oxen, heifer, and steer, became forfeited to said States.

And the jury further find, that, after the filing of said libel, in said District Court, and while the same was there in said Court pending, when and where the said Hoit appeared and claimed said oxen, heifer, and steer, viz. at a District Court holden at Portland, on the first Tuesday of December, A. D. 1814, the said oxen, heifer, and steer, were, by an interlocutory decree of said District Court, order-

ed to be sold at public auction, after giving notice, as in said decree directed, and the proceeds of said sale, after deducting the expenses of the same, to be deposited in the Cumberland Bank, for the benefit of whom it might thereafter concern. And the jury further find, that, pursuant to said order and decree, the aforesaid oxen, heifer, and steer, were sold at public auction, by the marshal of said Maine District, for the sum of five hundred and thirty eight dollars.

And the jury further find, that such proceedings were thereafter had in said District Court, as that, by the verdict of a jury there duly impanelled, it was found, that no person whatever did attempt to transport said oxen, heifer, and steer, to Castine; and that no person did attempt to transport said oxen, heifer, and steer, to New Brunswick; which said verdict being duly returned, received and recorded, in said Court, it was thereupon ordered and decreed by said Court, that the proceeds of said sales, (after deducting the expense for the necessary sustenance and custody of said oxen, heifer, and steer, procured previous to the sale aforesaid, and amounting to the sum of three hundred and eighty four dollars and forty three cents,) be forthwith paid over to said Hoit, the claimant; and the sum of one hundred fifty three dollars and thirty-seven cents being the sum remaining after said deduction, was then and there paid over to the said Hoit accordingly. And the jury further find, that the Judge of said District Court, then and there did certify and cause the same to be entered on the records of said District Court, that there was probable and reasonable cause for the seizure aforesaid.

And if, upon the facts aforesaid, the said Hoit ought not by law to recover against the said Hook, damages, for the taking, seizing, and carrying away aforesaid of said oxen, heifer, and steer, then the jury find, that said Hook is not guilty, in manner and form as the said Hoit has thereof declared against him; but, if, upon the whole facts aforesaid, the said Hoit ought by law to recover against the said Hook, damages, for the taking, seizing, and carrying away, aforesaid, then the jury find, that said Hook is guilty, in manner and form, as the said Hoit has thereof declared against him, and assess damages for the said Hoit, in the sum of eight hundred and ninety seven dollars and eighty two cents."

Whereupon, all and singular the premises being seen, and by the Court here fully understood, and mature advisement being thereon had, the Court are of opinion, that the said Hoit ought by law to recover against the said Hook, damages, for the taking, seizing, and carrying away, aforesaid : It is, therefore, considered by the Court, that the former judgment of this Court, in this action, is in nothing erroneous, and that the same be, and hereby is, affirmed; and that the said Josiah Hoit recover against the said Josiah Hook, junior, his costs of this action of review, taxed at six dollars and forty six cents.

John Wilson, Esquire, attorney to the said Hoit, acknowledges in Court, that he has received full satisfaction of said costs.

Attest, EDW. P. HAYMAN, *Clerk.*

A true copy, as appears of record.

Attest, MASON SHAW, *Clerk.*

COLLECTOR'S OFFICE,

Castine, January 11, 1823.

DEAR SIR: I now enclose you Mr. Preble's statement, and his letter, which will shew you the cause of the delay. I likewise enclose you a copy of the Report of the S. J. Court of Massachusetts, to save you the trouble of having to look it up; I hope you will receive them in season. I have done every thing I could, and have been at great expense, that there should be no delay. I should like to have the enclosed papers, in case my petition should not be granted, printed with the others, or reserved and returned to me, in case they are not printed.

I am, Dear Sir, with much esteem,

Very respectfully, your obedient servant,

JOSIAH HOOK.

Hon. WILLIAM D. WILLIAMSON.

CASTINE, *December 8th, 1823.*

SIR: My object, in addressing you at this time, is to remove from your mind impressions unfavorable to my claim against the United States, for indemnity on account of a judgment rendered against me in the Supreme Court of Massachusetts, at the suit of Josiah Hoit. It seems, from the report of the Committee of Claims, made in the House of Representatives in February, 1822, on a bill of the Senate, which had passed in my favor, that they decided against the claim, because *I had not used all reasonable diligence in defending myself against the suit.* It also seems probable that the committee came to this result, in consequence of your letter to Mr. Williams, Chairman of that Committee, which bears date February 8, 1822, and is printed with the documents accompanying said claim.

From those documents it appears, that I was directed by the Comptroller to request the District Attorney to take the requisite steps for an appeal from the decision of the state court against me; and that, immediately after receiving this direction, I enclosed the letter of the Comptroller to Mr. Preble, the District Attorney; that afterwards, a correspondence was had between those officers upon that subject, and that, owing to the poverty of Hoit, the prosecution of the writ of error was abandoned. Having duly communicated the letter of the Comptroller to Mr. Preble, I did suppose that I had done all that duty required. At any rate, I cannot consider that blame attaches to me for not causing a writ of error to be prosecuted, when the subject was under the consideration of the proper officers of the Government; much less, that I have thereby forfeited a just claim upon the United States for indemnity.

With respect to my having used reasonable diligence in defending myself against the suit of Hoit, I beg leave to refer you to the enclosed letters from Judge Perham, who was of counsel for me during the whole course of the suit, and from Judge Preble, the late district attorney. In addition, I would merely observe, that all the facts necessary for a full investigation of the merits of the case, were laid before the Supreme Court of Massachusetts, whose decision I was led confidently to believe would be in my favor. Of this opinion also was my counsel. Lest, however, we might be mistaken, I instructed Mr. Perham to take such measures as would enable us to carry the case into the Supreme Court of the United States, if the event should render that course advisable. Owing to a misapprehension of the law on his part, in supposing that a writ of error would lie *upon a case reserved*, it became necessary to sue out a writ of review, that the facts might appear of record, and a special verdict was returned, finding all the facts, and judgment was rendered thereon for Hoit. Will it be said that I am answerable for the mistake of counsel?—an error which other eminent counsel have been led into, as appears by the case of *Inglee vs. Coolidge*, reported in the 2 Wheaton, 363.

But it is extremely doubtful whether this error was injurious to the United States. By recurring to the letter of Mr. Preble to the Comptroller, dated March 10, 1819, it must be evident that, owing to the great distance from Washington, it would be impossible to have prosecuted a writ of error, and to have obtained a supersedeas to the execution, before it was satisfied. Indeed, it may be doubtful, whether the Supreme Court of the United States would issue a writ of supersedeas to an execution from the Supreme Court of a State, *in the hands of an officer for service*.

It may be said, that I ought to have informed the Treasury Department of the suit against me. In answer, I will state, that I had always the fullest confidence, that the certificate of the district court that there was probable cause for the seizure, was a good bar to the action. I had free communication with the district attorney, to whom I should probably have been referred had I written to your Department, and I did not suppose it important to trouble you on the subject. Several suits had before been brought against me on account of my official conduct, which had been successfully resisted without any communication with the Government, and I had supposed that such would be the result of the action of Hoit.

I flatter myself that, upon a review of my conduct, as stated in the letters above referred to, and upon a consideration of my motives and the circumstances brought into view in this communication, you may yet consider my claim upon the United States for indemnity, as just and equitable.

I am, Sir, very respectfully,

Your obedient servant,

JOSIAH HOOK, Jr.

Hon. WM. H. CRAWFORD,

Secretary of the Treasury.

TREASURY DEPARTMENT,

Comptroller's Office, 23d December, 1823.

SIR: The Secretary of the Treasury being still so much indisposed as not to be able to attend at his office, your letter to him of the 8th instant, with its enclosures, has been submitted to me by his chief clerk.

The object of your communication was to do away an impression of the Secretary that you had not used due diligence in defending yourself in the suit brought against you for damages, by Josiah Hoit, the claimant, in the case of some cattle seized by you.

You will perceive, from my letter to you of the 16th September, 1820, that the power of affording you relief, in this case, rests with Congress alone. It will, therefore, be proper that you should renew your application to that body; to which, also, the explanations contained in your letter, and the letters which accompanied it, should be made. With that view, they are returned herewith.

Respectfully,

J. ANDERSON, *Comptroller.*

JOSIAH HOOK, Esq.

PORTLAND, *January 4th, 1823.*

DEAR SIR: In your favor of the 7th ult. you inquire whether I ever returned an answer to the letter of the Comptroller, dated April 21st, 1819, respecting the suit brought against you by Hoit. It is impossible for me, after this lapse of time, to feel any thing like *absolute confidence*. I was not in the habit of preserving copies of letters, excepting in cases where I thought my official or private interest might be concerned. I have not copies, therefore, either of my letters to you, to the Attorney General of the United States, or to the Comptroller, relating to the Hoit business. I am, however, strongly impressed with the belief, that I did return an answer, and I seem to have a distinct recollection of a part of its contents. The only question was to Hoit's inability. This I could have answered at any time, and did answer; for, immediately after his commitment, he petitioned either the Secretary of the Treasury or the President to be discharged; and, by order of the Secretary of the Treasury, I made inquiry into the state of Hoit's affairs, and stated the facts of his poverty and insolvency, among others, relating to his character as a smuggler. I felt much interest in the question between you and Hoit, and was very desirous to have the subject brought before the Supreme Court of the United States, not only that the question might be fully

discussed, and properly settled, by the highest tribunal, but because I, at that time, thought the S. J. Court of Massachusetts had manifested an inclination to explain and fritter away, where possible, every provision of the constitution and laws of the United States. I recollect distinctly my *expecting*, for months, to *receive* definitive instructions, and that I received none. I also well remember that I accounted for my not receiving such instructions in this way, viz: that the Comptroller had explicitly stated it would be subjecting the United States to useless expense in case Hoit had not property sufficient to pay over the costs of suit; that I had stated his poverty, and that *the Comptroller, therefore, considered it unnecessary to instruct me farther, inasmuch as he did not think proper to instruct me to proceed.* But, at all events, in forbearing to prosecute the writ of error, I did not act in pursuance of any instructions from you, nor in accordance with my own wishes, but in compliance with what I believed to be the intentions of the proper officers of the Treasury Department. Nor have the United States, or yourself, lost any thing by this delay. Hoit's situation is no worse, and a writ of error may still be sued out, and prosecuted, if it is thought expedient to do so. With regard to the proceedings in the courts of Massachusetts, by recurring to the case as reported 14 Mass. Rep. 210, it will be manifest, that the whole facts were disclosed on the first trial, as well as on the review. The cause having been tried at *nisi prius*, the question of law was reserved, in the usual manner, for the consideration of the whole court; and, in such cases, *the right of review must, by a rule of court, be waived on the record.* After the very unexpected decision of the court against you, *execution issued against you as a matter of course.* You had, previously, often conversed with me on the subject, and I had always stated to you my confidence that the decision would be in your favor; at the same time I always cautioned you to have the cause so conducted, that, in case of a decision against you, it might be removed to the Supreme Court of the United States. Your counsel, and he was by no means alone in this respect, seemed not to be aware that, by reserving a question of law in the usual manner, the facts in the case would not appear on record, and, of course, *error would not lie.* It seemed, therefore, as if you had not only lost your cause, but had lost all remedy. Under these circumstances, you applied to me to see whether any thing could be done. At your request, I examined into the state of the proceedings, and finding that *the right of review had not been waived*, I sued out a writ of review in your behalf, and caused the facts to appear on the record; and *the record itself so to be made up that error might be brought* in the Supreme Court of the United States, if the Treasury Department should think proper to order it to be done. And it is but an act of justice to say, that, while the cause was pending before the courts of Massachusetts, you always discovered much solicitude about it; and no man could have done more, in my opinion, or have acted with greater fidelity, than you did.

I am, dear sir, very respectfully,

WILLIAM P. PREBLE.

BREWER, November 25, 1823.

DEAR SIR: I am requested by you to forward a statement of facts relating to an action of trespass brought against you by one Josiah Hoit, for the seizure of certain cattle, which was decided by the Supreme Judicial Court, at Castine, June term, 1817.

I defended that action, at your request, in the courts where it was prosecuted. It appeared that the cattle were seized by one of your deputies, and duly libelled in the District Court of the United States, for an alleged violation of law; that the Judge of said court ordered the cattle to be sold by the Marshal, and the *proceeds*, after deducting the expenses of keeping, to be deposited with the Clerk of said court; which order was complied with. It further appeared, that, upon trial, the jury returned a verdict in favor of Hoit, the claimant; and he took the proceeds of the sale deposited with the Clerk, as above stated; but the Judge was satisfied that "*there was reasonable cause of seizure*," and it was so entered upon the records of the court.

It was here contended, that these facts constituted a good defence to the action. There being but one Judge then sitting at Nisi Prius, it was proposed by him, that the jury might *ascertain the value of the cattle* by their verdict, which should be set aside, and judgment rendered for the defendant, if, in the opinion of the full court, the defence was sufficient in law. This was done; but, at a subsequent term, the Chief Justice gave the opinion of the court contrary to what had been anticipated. "That the Judge of the District Court had no authority to order the sale of the cattle, nor to deduct from the *proceeds* the expenses of keeping; and the cattle not being returned, notwithstanding Hoit accepted, and took from the Clerk, the proceeds of the sale, the certificate of "*reasonable cause of seizure*," could have no effect according to the provisions of the act, and that the transaction became trespass *ab initio*. And although it was not the fault of the Collector that the cattle were not returned to the claimant, yet the only remedy a citizen has, when oppressed by Government, is against the *officer*, who, acting in pursuance of instructions, must apply to Government for remuneration."

After this decision was made, an appeal to the Circuit Court of the United States was claimed; but the Chief Justice said, "there can be no appeal, the act granting it being at an end; and, probably, it would not be allowed if in force." An attempt was made to stay execution, but two months delay was all that could be obtained. The action was afterwards reviewed; but it was under the management of Mr. Preble, then District Attorney of the United States, and to whom I must refer for an account of the subsequent proceedings.

I always thought you manifested zeal and ardor in the defence of this action, and in the interest of the United States. While writing, my recollection is carried back to the unhappy times that originated this action, and the troubles and difficulties with which you were then assailed: When the hope of gain, with many, overcame their respect for the laws and constituted authorities of their country; and when

many attempts were made to array the authorities of the state against those of the United States. I will name a few instances.

A party under Col. Whitney, one of your deputies, was arrested and brought before a magistrate at Bangor, charged with a breach of the peace and a riot, for attempting to stop and seize a flock of cattle, then passing on for the enemy at Frederickstown. They were ordered to recognize, with sureties, by the magistrate, for their appearance before the Supreme Judicial Court, and there answer to the charges; they appeared, and were finally discharged. A similar attempt was made in Prospect, against a deputy, for seizing articles coming from the enemy at Castine. He was indicted, and actually convicted, before the Common Pleas, at Bangor; an appeal was had, and, after much difficulty, he and his bondsmen were exonerated. Another instance was the arrest of Col. Wilson, likewise a deputy, for searching a sleigh suspected to have contained smuggled goods. He was indicted, and convicted before the Supreme Judicial Court at Castine; but, a suspension of sentence having been obtained, the court became satisfied, at a subsequent term, that he was authorized by law to make the search, and he was discharged. But another, of a more flagitious character, occurred in Hampden, where a party, under one of your officers, was arrested on warrants, charged with breaches of the peace, for seizing articles coming from the enemy at Castine, and which were afterwards duly libelled. The officer, notwithstanding he made known the character in which he acted, was actually committed to gaol in Augusta, by order of the magistrate, upon a charge of robbery, from whence he was released upon a writ of habeas corpus, obtained with great inconvenience.

Over these scenes every friend of his country would wish to draw a veil, and that the like might never again be witnessed. I have been induced to name these instances, in connection with the action which is the subject of this letter, as well on account of their having occurred about the same time, as to justify the remark I have above made relative to the zeal with which you appeared to defend this action.

While engaged in defence of these prosecutions, I witnessed your solicitude and anxiety in every instance; and it gives me pleasure in recollecting, that all were conducted to a favorable issue, except this action, and how far that deserved a different result, is a fair subject of inquiry. If you think this letter will have any effect in promoting the object you have in view, you are at liberty to use it.

I am, with much respect,

Your obedient servant,

DAVID PERHAM.

JOSIAH HOOK, JR. Esq.

Collector, Castine.

A case argued and determined in the Supreme Judicial Court, in the county of Hancock, June term, 1817, at Castine.

Present: Hon. Isaac Parker, Chief Justice.

George Thatcher,	} Justices.
Samuel Putnam,	
Samuel S. Wilde,	

Josiah Hoit vs. Josiah Hook, Jr.

This was an action of trespass, for taking and carrying away twenty-one oxen, one cow, and one steer, the property of the plaintiff. The general issue was pleaded, and liberty reserved and allowed to give in evidence any special matter in justification, as if pleaded.

At the trial of this issue, which was had before Wilde J. at the sittings here, after the last June term, it appeared that the defendant, at the time of the taking, &c. was collector of the port of Penobscot, and duly qualified to act in that office; and that the said cattle were seized by his order, as liable to forfeiture and condemnation to the use of the United States.

The defendant read, in evidence, a copy of a decree of the District Judge for the District of Maine, a copy of which came up in the case, and relied for his justification on the certificate of the said judge that there was reasonable cause for the seizure, &c.

(The said decree recites the libel filed by the District Attorney in behalf of the United States, in which it is alleged that the now defendant ordered the said cattle to be seized; for that, on the 22d of September, 1814, certain citizens of said states, unknown to the said attorney, attempted to transport the same to Castine, then occupied by the enemies of the United States, being an article of provisions intended for the supply and support of the said enemies; whereby they had become forfeited, &c. A second count in the libel alleges an attempt to transport the same cattle to some place in New Brunswick.

After public notice, the now plaintiff came into the District Court, claimed the cattle, and traversed the allegations in the indictment; and issues being joined by the District Attorney, a verdict was returned, that the allegations in the libel were not supported.

Whereupon, it was decreed by the District Judge, that the cattle were not liable to forfeiture: and it appearing to the court that there was reasonable cause of seizure, and that an expense of \$384 43 had been incurred for the necessary sustenance and custody of said cattle, it was further ordered that \$151 57 cents, being the nett amount of the sales of the cattle, after deducting the expenses incurred and allowed as aforesaid, be paid over to the claimant.)

A verdict was taken for the plaintiff, by consent of parties, subject to the opinion of the court upon the question of law applicable to said supposed matter of justification. And, if the Court should be of opinion that the said certificate of the District Judge was sufficient, in law, to justify the defendant in seizing said cattle, and selling the same, and retaining from the amount of the proceeds of the sale the

said sum of \$384 43 cents for the sustenance and custody of said cattle, agreeably to the decree and direction of the said District Judge, the verdict was to be set aside, and the plaintiff to become nonsuit; otherwise, judgment was to be entered according to the verdict.

Perham, for the defendant, contended, that his conduct was justifiable, as being merely the performance of a duty enjoined upon him by the Government of the United States, of which he was an officer.

By U. S. Stat. 12 Cong. c. 129, sec. 2, the attempt to transport any articles of provision from any part of the United States to any place in Upper or Lower Canada, Nova Scotia, or New Brunswick, is prohibited, and such are declared forfeited, &c. And by sec. 3, collectors of the several ports are authorized to seize such articles so attempted to be transported, &c.

By U. S. Stat. 5 Con. c. 128, sec. 89, when, in cases of seizure, judgment shall be given for the claimant, if it shall appear to the court, before whom the trial shall be, that there was a reasonable cause of seizure, the person who made the seizure shall not be liable to any action, suit, or judgment, on account of such seizure: provided the goods be forthwith returned to the claimant. The same provision is re-enacted by U. S. Stat. 13 Cong. c. 93, sec. 7.

In this case, the District Court having directed the cattle to be sold, it was impossible for the Collector to return them. He did what was equivalent, he forthwith paid over the proceeds to the claimant, deducting only the costs of keeping them, as allowed by the court. Had they not been sold, the expense of keeping them would have exceeded their value, and there must have been a total loss of the property.

But the plaintiff has misconceived his remedy in bringing his action in this court. The defendant did his duty in instituting the process. After it was commenced, it was out of his control, and he is not answerable in any other forum. If the plaintiff was dissatisfied with the issue of his claim in the District Court, he should have sought his remedy in the courts of the United States, having appellate jurisdiction. It is humbly insisted that the decision of the District Court, upon a matter confessedly within its jurisdiction, and not appealed from, cannot be animadverted upon or called in question in this court.

Mellen, for the plaintiff, admitted, that there had been an order of the District Court for the sale of the cattle; but, as they were not perishable articles, there was no authority vested by law in the court to make such an order. The cattle having been decreed not liable to forfeiture, the claimant had a right to the possession of them in kind. It is no excuse or defence against this right, that the support of them would have exceeded their value. That was no concern of the claimant. The provisions of the statute of the United States, protecting their officers in cases of this kind, are expressly on the condition that the articles seized are forthwith restored. The certificate of the judge, as to a reasonable cause of seizure, is of no avail; is entirely without effect, unless this condition be absolutely

complied with. That certificate makes no part of the judge's decree: it is then difficult to conceive what remedy the claimant could have had by applying to a court of appellate jurisdiction, for a further remedy on that process. When the jury, by their verdict, had supported the claim, the District Court had nothing further to do in the cause, but to award a restoration of the cattle. In taxing the costs of keeping, and deducting them from the proceeds of the cattle, it acted wholly without its jurisdiction.

Per curiam. The decree of the judge, founded on the verdict of the jury, having liberated the property seized, it ought to have been restored to the claimant. The certificate of the judge, of reasonable cause, can operate to bar an action, only when the property is restored according to the proviso in the statutes. The deduction of the expenses does not appear to be justified by any law; and the sale of the property, under an order of the judge, which appears to have no legal authority, cannot affect the plaintiff's right to recover the full value of the chattels, of which he has been deprived. Judgment on the verdict.